

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF HAWAII**

In re

HAWAIIAN AIRLINES, INC.,

Debtor.

Case No. 03-817

Chapter 11

Re: Docket No. 6059

**MEMORANDUM OF DECISION ON MOTION FOR SANCTIONS  
FOR VIOLATION OF DISCHARGE INJUNCTION**

I have previously held that Robert C. Konop violated the discharge injunction by continuing to litigate claims against the debtor that arose prior to the confirmation date. See docket no. 6075 and 6084 and my oral statement of reasons at a hearing on November 17, 2008. The remaining issue is the amount of monetary sanctions that should be awarded to the reorganized debtor.

In this case, the appropriate measure of monetary sanctions is the amount that is necessary to compensate the victim (the reorganized debtor) for expenses that it would not have incurred but for Mr. Konop's violation of the discharge.

The reorganized debtor has established that it incurred attorneys' fees and costs in the amount of \$101,157.43 in defending itself against Mr. Konop's claims after August 14, 2008. The reorganized debtor seeks a monetary sanction against Mr. Konop in that amount.

Mr. Konop does not challenge the time records or the hourly rates requested

by counsel, and I find that the hourly rates are reasonable and that the time spent was reasonably and necessarily incurred and would not have been incurred but for Mr. Konop's violations of the discharge injunction.

Although the discharge injunction became effective on June 2, 2005, and Mr. Konop pressed his discharged claims against the debtor beginning soon after that date, the reorganized debtor did not assert that the claims were discharged until September 4, 2008. At the prior hearing, I suggested that I might not allow attorneys' fees incurred prior to that date as a sanction. The reorganized debtor suggests that the sanctions award should include fees incurred by its bankruptcy counsel beginning on August 14, 2008, when counsel began to analyze the applicability of the discharge injunction to Mr. Konop's claims. I agree that fees and expenses incurred prior to that date should not be included in the sanctions award.

Almost all of Mr. Konop's response (docket no. 6110) consists of an effort to justify all of his behavior in this case, including things that he did before the discharge injunction was in place, and arguments that he should not be sanctioned at all. I have already decided that Mr. Konop should be sanctioned and Mr. Konop's arguments do not change my decision.

The only arguments that seem to bear on the amount of sanctions are (1) that

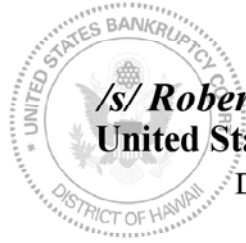
the court should take Mr. Konop's financial condition into account in determining the amount of sanctions and (2) the reorganized debtor may be able to avoid or mitigate the expenses because its counsel committed malpractice by failing to assert the discharge injunction earlier.

Mr. Konop's financial condition does not warrant a less than fully compensatory sanction. All people, solvent or insolvent, must obey valid court orders. Mr. Konop was personally involved in the plan confirmation process; he knew or should have known about the discharge injunction; and he persisted in his violations of the discharge litigation even after he was warned to desist. He should be held responsible for his misconduct even though he is not currently employed and has limited assets.

Mr. Konop is also not entitled to a free pass because the reorganized debtor did not immediately assert the discharge injunction as a defense. A wrongdoer cannot legitimately complain that his victim did not stop him soon enough. Because I am not awarding any fees for services rendered before the reorganized debtor began to analyze the defense, the sanctions are appropriately mitigated to reflect the delay.

Accordingly, I will award sanctions in favor of the reorganized debtor and against Mr. Konop in the amount of \$101,157.43. Counsel for the reorganized

debtor will prepare an appropriate judgment.



***/s/ Robert J. Faris***

**United States Bankruptcy Judge**

**Dated: 12/16/2008**